

U.S. DISTRICT COURT  
DISTRICT OF VERMONT  
FILEDUNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

2019 DEC 30 PM 4:11

THOMAS COLE,  
Plaintiff,  
v.

CLERK

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Civil Action No. 2:18-cv-220

FOXMAR, INC. d/b/a EDUCATION  
AND TRAINING RESOURCES,  
Defendant.**FOURTH AMENDED COMPLAINT**

NOW COMES Plaintiff Thomas Cole ("Plaintiff"), by and through his attorney, William Pettersen IV, Esq., and hereby complains against Foxmar, Inc. d/b/a Education and Training Resources ("Defendant") as follows:

1. Plaintiff is a resident of the Town of Ferrisburgh, County of Addison, State of Vermont.
2. Defendant is a business operating in the Town of Vergennes, County of Addison, State of Vermont.
3. Defendant operates the Northlands Job Corps Center ("NJCC") in Vergennes.
4. Defendant submits bids and is awarded federal contracts by the U.S. Department of Labor ("DOL") for the management and operation of Job Corps Centers, including NJCC.
5. Defendant is a private employer based out of Kentucky.
6. Defendant was awarded the contract from the DOL and took over operation of NJCC in 2018.
7. Defendant hired Plaintiff on or around May 23, 2018 as a full-time residential counselor at NJCC.

- 1 8. NJCC is an educational facility providing training and employment services to
- 2 disadvantaged youth and adults to assist with their professional and personal
- 3 growth.
- 4 9. NJCC assists its students in obtaining their high school diploma, driver's license,
- 5 and licenses for various trades, among other things.
- 6 10. As a residential counselor, Plaintiff's duties included overseeing the dormitory
- 7 life at NJCC.
- 8 11. Part of Plaintiff's oversight responsibilities included the sanitation of dormitories.
- 9 12. The Defendant's Employee Handbook required its employees "to report any non-
- 10 compliance issues," to report any "violation of safe practices," and to "call
- 11 attention to conditions or situations which threaten the safety and security of
- 12 others by contacting appropriate Center management representatives."
- 13 13. On or around Monday, July 23, 2018, Plaintiff noticed numerous violations of
- 14 safe practices.
- 15 14. Plaintiff had been assigned to a different dormitory on Monday because its usual
- 16 counselor, Paige, was out sick.
- 17 15. During Plaintiff's supervision of the dormitory, the students communicated that
- 18 they did not have any supply of cleaning sanitizer.
- 19 16. This sanitizer is something that all students are supposed to have in order to
- 20 clean their dormitories, including the railings and doorways, and it is something
- 21 that is required to be kept in stock by the counselors.
- 22 17. Mondays are the biggest cleaning day on campus, and Plaintiff was with Angela
- 23 Mobley ("Ms. Mobley"), lead counselor, on Monday, July 23, 2018, when they
- 24 were informed that the students in the dormitory had no supply of sanitizer.

1 18. Apparently, the normal counselor for that dormitory, who had called out sick that  
2 day, had failed to keep the dormitory properly stocked with sanitizer, which the  
3 students complained about to Plaintiff and Ms. Mobley.

4 19. The students showed Plaintiff and Ms. Mobley an empty cleaning basket with no  
5 cleaning supplies.

6 20. Ms. Mobley thereafter went to the purchasing department and picked up  
7 approximately four spray bottles, including sanitizer, for the dormitory.

8 21. However, it was unclear how long the students had been without sanitizer.

9 22. Furthermore, many of the students in that dormitory were sick, along with the  
10 counselor that normally supervised the dormitory.

11 23. At a meeting with counselors on Monday, Ms. Mobley asked how everyone was  
12 doing, and one of the counselors, Tori Ramon ("Ms. Ramon"), communicated  
13 that she was extremely sick.

14 24. Ms. Mobley said something to the effect of, "you people in Vermont need to take  
15 your medicine."

16 25. Ms. Mobley told Ms. Ramon that she could go home if she could find someone to  
17 fill in for her.

18 26. In other words, Ms. Mobley communicated to Ms. Ramon that she could not go  
19 home unless she could find someone to replace her.

20 27. Upon information and belief, Ms. Ramon ended up working her entire shift on  
21 Monday.

22 28. For each of these reasons, Plaintiff met with Alisha Grangent ("Ms. Grangent") on  
23 the following morning, Tuesday, July 24, 2018.  
24

1 29. Ms. Grangent is the Center Director for NJCC and oversees the entire Vergennes  
2 campus.

3 30. During his meeting with Ms. Grangent, Plaintiff notified her about the health and  
4 safety violations that he had witnessed the day before, and he expressed his  
5 concern that these violations placed the students and employees at a risk to their  
6 health.

7 31. Specifically, Plaintiff communicated his concern that the failure of one or more  
8 counselors to properly supply the dormitory in question with cleaning supplies,  
9 and the failure on the part of Ms. Mobley to let her counselors go home when  
10 they were sick, were placing the students and employees at risk to their health.

11 32. Ms. Grangent acknowledged that she had spoken with Christina Brace ("Ms.  
12 Brace"), Acting Wellness Coordinator, and that Ms. Brace had said there was an  
13 abdominal virus going around campus that they had been getting complaints  
14 about.

15 33. After hearing Plaintiff's health and safety complaints, Ms. Grangent notified both  
16 Ms. Mobley and Bernadette Brookes, Human Resources Manager ("Ms.  
17 Brookes") of the complaints, at which time Ms. Mobley became angry.

18 34. Plaintiff subsequently left work early on Tuesday because he was feeling ill and  
19 notified Ms. Grangent and her executive assistant that he was leaving early due to  
20 illness.

21 35. On Wednesday, July 25, 2018, Plaintiff called Defendant's Human Resources  
22 Department at its corporate office in Kentucky and left a voicemail that there  
23 were some difficulties on campus at NJCC that he would like to report.

24 36. Plaintiff never received a call back.

1 37. Plaintiff had Wednesday and Thursday off during that week, which were his  
2 regularly scheduled days off.

3 38. On the morning of Friday, July 27, 2018, while preparing to return to work that  
4 day, Plaintiff called Mari Trybendis, Human Resources Assistant ("Ms.  
5 Trybendis") in the morning and asked her for direction on submitting a written  
6 complaint regarding his health and safety concerns, as well as his request for  
7 reassignment.

8 39. Ms. Trybendis directed Plaintiff to email her his complaint and request for  
9 reassignment and to cc Ms. Grangent.

10 40. Plaintiff thereafter sent an email Friday morning to Ms. Trybendis and Ms.  
11 Grangent with an attached letter again notifying his superiors about the health  
12 and safety issues he had witnessed earlier in the week.

13 41. Plaintiff addressed the letter to Ms. Brookes and emailed it to Ms. Grangent and  
14 Ms. Trybendis, and he asked that they direct the letter to any other appropriate  
15 supervisors.

16 42. In the letter, Plaintiff also asked that he be considered for reassignment out of the  
17 Department of Independent Living, where he was currently working at NJCC,  
18 based on the health and safety issues that he believed were an unnecessary risk to  
19 him and others.

20 43. Just a few hours later, on Friday afternoon, Plaintiff received a voicemail from  
21 Ms. Brookes notifying him that she needed to speak with him about his continued  
22 employment.

23 44. Plaintiff went in and met with Ms. Brookes that afternoon.

24 45. Ms. Brookes terminated Plaintiff's employment at their meeting.



1 46. Plaintiff asked Ms. Brookes why she had not addressed any of his complaints.

2 47. Ms. Brookes told Plaintiff that she had not received any complaints from him.

3 48. Defendant thereafter issued a Termination Notice dated July 27, 2018, which was  
4 signed by Ms. Mobley, Ms. Brookes, and Howard Harmon, Executive Vice-  
5 President and Chief Operating Officer ("Ms. Harmon").

6 49. In the Termination Notice, Defendant claimed that it was firing Plaintiff because  
7 he allegedly abandoned his scheduled shifts on Monday, July 23, 2018, Tuesday,  
8 July 24, 2018, and Wednesday, July 25, 2018.

9 50. This claimed reason for termination was completely false and was not the real  
10 reason for Defendant's termination of Plaintiff.

11 51. Despite Defendant's false allegations, Plaintiff worked all of Monday; Plaintiff  
12 worked part of Tuesday and then left sick after notifying Ms. Grangent and her  
13 executive assistant; and Plaintiff was not scheduled to work on Wednesday or  
14 Thursday of that week.

15 52. Defendant's true reason for terminating Plaintiff was because of the complaints  
16 he reported to his superiors about the health and safety violations he witnessed.

17 53. In fact, on Friday, July 27, 2018, Ms. Grangent refused to sign the Termination  
18 Notice, despite being asked to do so by Ms. Brookes, because neither Ms. Brookes  
19 nor Ms. Mobley could explain how job abandonment was possible since Plaintiff  
20 had worked on Tuesday.

21 54. Ms. Brookes and Ms. Mobley were also unable to answer Ms. Grangent when she  
22 asked what days Plaintiff actually missed that week, and what his scheduled days  
23 off were that week.

1 55. Ms. Grangent had also received constant complaints about Ms. Mobley from the  
2 staff during her time as Residential Manager.

3 56. Most often, these complaints were about how Ms. Mobley was threatening to  
4 discipline and terminate staff if they made complaints.

5 57. Ms. Mobley would also tell staff on a weekly basis that, if they had any issues,  
6 they needed to go to her first, that if they went over her head there would be  
7 consequences, and that it was not hard to replace them.

8 58. In addition to Ms. Mobley, corporate officials from ETR created a culture of  
9 suppressing complaints, including numerous incidents whereby those officials  
10 told Ms. Grangent and other employees to suppress complaints.

11 59. Ms. Mobley was directly involved in the decision to terminate Plaintiff.

12 **CAUSES OF ACTION**

13 **COUNT I – WRONGFUL TERMINATION IN VIOLATION OF**  
14 **THE VERMONT OCCUPATIONAL SAFETY AND HEALTH ACT (VOSHA)**

15 60. Plaintiff realleges and repeats paragraphs 1-59 as though fully set forth herein.

16 61. Defendant discharged and discriminated against Plaintiff because he complained  
17 to Defendant and his superiors regarding violations of VOSHA that he observed  
18 and reasonably believed to be occurring.

19 62. Plaintiff reported violations of VOSHA set forth in 29 C.F.R. 1925.1, requiring  
20 that Defendant, as a contractor of the United States, must not have “working  
21 conditions, provided by or under the control or supervision of the contractor or  
22 any subcontractor, which are unsanitary or hazardous or dangerous to the health  
23 or safety or service employees engaged to furnish the services.”  
24

1 63. Plaintiff reported violations of VOSHA set forth in 29 C.F.R. § 4.6, which requires  
2 that Defendant, as a contractor of the United States, “shall not permit any part of  
3 the services called for by this contract to be performed in buildings or  
4 surroundings or under working conditions provided by or under the control or  
5 supervision of the contractor or subcontractor which are unsanitary or hazardous  
6 or dangerous to the health or safety of service employees engaged to furnish these  
7 services, and the contractor or subcontractor shall comply with the safety and  
8 health standards applied under 29 CFR part 1925.”

9 64. Plaintiff reported violations of VOSHA’s policies set forth under 21 V.S.A. § 201  
10 that “in their employment all persons shall be provided by their employers with  
11 safe and healthful working conditions at their work place, and that insofar as  
12 practicable an employee shall not experience diminished health . . . as a result of  
13 his or her work experience” and “that practices and procedures prescribed by an  
14 employer . . . shall not be insofar as practicable, dangerous to the life, body, or  
15 well being of the employees.”

16 65. Plaintiff reported violations of VOSHA set forth in 29 C.F.R. 1910.141(a)(3)(i),  
17 requiring that, “[a]ll places of employment shall be kept clean to the extent that  
18 the nature of the work allows.”

19 66. Defendant had no legitimate reason for terminating Plaintiff.

20 67. To the extent Defendant had a legitimate reason for terminating Plaintiff, such  
21 reason was pretextual, and the actual reason for termination was retaliation  
22 against Plaintiff for complaining about VOSHA violations.

23 68. Plaintiff’s complaints were also, at minimum, a motivating factor in Defendant’s  
24 decision to terminate him.



69. Defendant would not have terminated Plaintiff without this retaliatory motivation.

70. Plaintiff is entitled to damages in an amount to be proven at trial, including reinstatement, triple wages, front pay, back pay, compensatory damages, punitive damages, costs, reasonable attorney's fees, and any other relief authorized by law, all with applicable legal interest.

**COUNT II – WRONGFUL TERMINATION IN VIOLATION OF  
THE VERMONT EARNED SICK TIME ACT ("VESTA")**

71. Plaintiff realleges and repeats paragraphs 1-70 as though fully set forth herein.

72. Defendant discharged and discriminated against Plaintiff because he complained to Defendant and his superiors regarding a violation of VESTA that he observed and reasonably believed to be occurring.

73. Plaintiff reported a violation of § 483(g) of VESTA, which states that, "[a]n employer shall not require an employee to find a replacement for absences, including absences for professional diagnostic, preventive, routine, or therapeutic health care."

74. Defendant had no legitimate reason for terminating Plaintiff.

75. To the extent Defendant had a legitimate reason for terminating Plaintiff, such reason was pretextual, and the actual reason for termination was retaliation against Plaintiff for complaining about one or more violations of VESTA.

76. Plaintiff's complaints were also, at minimum, a motivating factor in Defendant's decision to terminate him.

77. Defendant would not have terminated Plaintiff without this retaliatory motivation.

1 78. Plaintiff is entitled to damages in an amount to be proven at trial, including  
2 reinstatement, front pay, back pay, compensatory damages, punitive damages,  
3 costs, reasonable attorney's fees, and any other relief authorized by law, all with  
4 applicable legal interest.

5 **COUNT III – PROMISSORY ESTOPPEL**

6 79. Plaintiff realleges and repeats paragraphs 1-78 as though fully set forth herein.

7 80. In the event the Employee Handbook did not create an employment contract, it  
8 nonetheless set forth a promise by Defendant not to terminate Plaintiff in  
9 retaliation for reporting safety violations.

10 81. Defendant reasonably expected, or should have reasonably expected, Plaintiff to  
11 take action of a substantial character based on this promise, including the action  
12 of reporting safety violations, as well as any activity he reasonably believed could  
13 be a safety violation.

14 82. This promise did in fact induce the definite and substantial action by Plaintiff of  
15 reporting safety violations and activities he reasonably believed could be safety  
16 violations.

17 83. Injustice can only be avoided by the enforcement of this promise.

18 84. Plaintiff is entitled to damages in an amount to be proven at trial, including  
19 expectation damages, restitution damages, reliance damages, punitive damages,  
20 costs, reasonable attorney's fees, and any other relief authorized by law, all with  
21 the applicable legal interest.

22 WHEREFORE, Plaintiff requests the following relief:

- 23 1. Judgment in favor of Plaintiff on each of his claims.  
24 2. Damages in an amount to be proven at trial.

3. Costs.
4. Reasonable attorney's fees.
5. Any other relief authorized by law.
6. Judgment interest.
7. Such other relief as the Court deems just and proper.

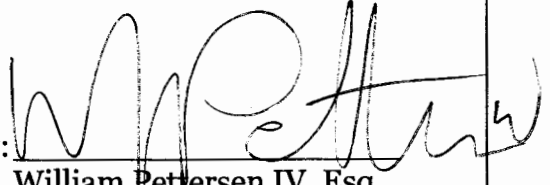
**JURY DEMAND**

Plaintiff request a trial by jury on all issues so triable.

Dated at Colchester, Vermont this 27<sup>th</sup> day of November, 2019.

THOMAS COLE

By:

  
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